

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

**Misc. Application No. 513/2020 (Amendment)
In
Appeal No. AT00600000052759**

M/s. Nirman Realtors & Developers Pvt. Ltd. ... Appellant
(Promoter)

Versus

Mr. Shabnam Ansari & Ors. ... Respondents
(Allottees)

Adv. Anuj Narula for Appellant.

*Adv. Cherag Balsara with Mrs. Leena Shah i/b M/s. Shah &
Furia Associates for Respondents.*

**CORAM : SUMANT M. KOLHE, MEMBER (J)
S. S. SANDHU, MEMBER (A)**

DATE : 20th JANUARY, 2021.

(THROUGH VIDEO CONFERENCING)

[PER: S. S. SANDHU, MEMBER (A)]

Vide order dated 14.12.2020 this Tribunal has already been rejected Misc. Application No. 451/20 filed by Appellant seeking waiver of requirement of pre-deposit in compliance of Proviso to Section 43(5) of Real Estate (Regulation and Development) Act, 2016 (for short, the RERA). Consequently, matter was kept for hearing the parties on the limited point of deciding quantum of amount to be deposited as per the aforesaid Section for entertaining the Appeal. After hearing the parties, this order is being passed accordingly.

2. Learned counsel for Promoter, the Appellant, argued that the orders dated 06.01.2020 read with 13.01.2020 (jointly referred as the impugned orders) passed by Adjudicating Officer (AO) are without jurisdiction in view of the order passed by this Tribunal in the case of **Pankaj Agarwal & Anr. Vs. Real Gem Buildtech Pvt. Ltd. in Appeal No. AT00600000052542 dated 31.08.2020.** He argued that it is well settled law that any order passed without jurisdiction over subject matter is a nullity and ab-initio void. Therefore, the decree as per impugned orders for effecting recovery by AO lacking jurisdiction is a nullity and so, being incapable of execution cannot be given any effect.

He also argued that order dated 26.04.2018 sought to be executed by complainant Allottees does not survive in view of the order passed by this Tribunal on 17.10.2018 as per consent terms executed by the parties. He further submitted that mere liberty granted to Respondents by this Tribunal vide order dated 10.10.2019 for seeking execution of order dated 26.04.2018 would not itself mean permission for execution if the execution of the said order is not permissible as per law.

3. It is also contended by Promoter that some amount already paid by Promoter to Allottees is counted against interest instead of the principal amount contrary to settled principles and therefore the amount of Rs. 4, 30, 39,763 calculated as payable by Respondents is not factually correct. Learned counsel for Promoter also alleged that in the

execution proceedings Allottees have suppressed the facts regarding settlement between the parties based on consent terms and therefore they cannot claim an equitable relief. In view of these submissions, learned counsel for Appellant submitted that no amount is required to be deposited under Section 43(5) of RERA in this matter and therefore Appellant cannot be directed to pre-deposit any amount for entertaining the Appeal.

4. Learned counsel for Respondents submitted that as already held by this Tribunal in order dated 14.12.2020 in view of various case law, this Tribunal has no jurisdiction to waive the mandatory requirement as per proviso to Section 43(5) of RERA. He further submitted that as per the warrants of recovery issued vide impugned orders based on order 26.04.2018, Appellants are required to pay amount of Rs. 4,30,49,769/- which is arrived at after giving due credit to amount already paid by Promoter. He submitted that this is the decretal amount ordered in execution and therefore pressed for maximum amount to be deposited by Appellant. He also submitted that considering the Promoter's stand in the Writ Petition (L) No. 5332 of 2020 that it was facing financial difficulties, it is likely that Promoter may evade his liabilities or run away from its obligations to Respondents herein and therefore Promoter be made to pay the entire amount as per impugned orders.

